

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:SB: [REDACTED]: [REDACTED]: TL-N-6933-00
[REDACTED]

date:

to: Director (SBSE), Area [REDACTED]
Technical Support Group [REDACTED]

from: Associate Area Counsel (SBSE)
Area [REDACTED]

subject: [REDACTED] Settlement Receipts

This is in response to [REDACTED] request for advice for the proper estate tax treatment of [REDACTED] refunds issued by the [REDACTED] as a result of the [REDACTED]

[REDACTED]. Attorney [REDACTED] of this office has discussed this issue with Estate and Gift Tax Attorneys [REDACTED], [REDACTED], and [REDACTED].

ISSUE

Whether [REDACTED] tax refunds issued to estates of decedents who filed [REDACTED] returns, but did not file them "under protest," are includible in the gross estate of the estate's Federal estate tax return.

CONCLUSION

For the reasons discussed below, [REDACTED] refunds issued to estates of decedents who filed [REDACTED] returns, but did not file them "under protest," are includible in the gross estate on an estate tax return only if the decedent died after [REDACTED], the date of the aforementioned [REDACTED].

BACKGROUND

For a number of years, the State of [REDACTED] imposed an [REDACTED] pursuant to [REDACTED] on the fair market value of shares of stock owned by [REDACTED] taxpayers on December 31st of each year. The statute provided, in pertinent part:

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] of the [REDACTED] taxing scheme, alleging specifically that section [REDACTED] violated the Commerce Clause of the United States Constitution, as it placed a heavier tax burden on stock of corporations not doing business in [REDACTED]. The plaintiff further alleged that the taxing scheme violated its due process and equal protection rights accorded by the United States and [REDACTED] Constitutions.

Ultimately, the United States Supreme Court determined that

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] The case was then remanded to the [REDACTED] for consideration of remedial issues.

On remand, the [REDACTED] concluded that the United States Supreme Court's opinion did not require a finding that the entire [REDACTED] tax be found unconstitutional. Instead, the [REDACTED] concluded that the commerce clause required the severance of the taxable percentage deduction. The [REDACTED] further concluded that whether to enforce the tax as to all shareholders was within the province of the General Assembly, not the Court.

[REDACTED]

Subsequent to the beginning of the [REDACTED] litigation, a number of [REDACTED] taxpayers filed suit challenging the constitutionality of the [REDACTED] tax levied on corporate stock. On [REDACTED], the [REDACTED]

[REDACTED]

[REDACTED] members consisted of those who paid the [REDACTED] tax for [REDACTED], [REDACTED], and [REDACTED], and demanded refunds of the tax within 30 days pursuant to the applicable refund statute, [REDACTED] for taxes paid on or after November 1, 1996). [REDACTED] members consisted of taxpayers who paid the [REDACTED] tax for the same years but failed to meet the requirements set forth in [REDACTED] refund statute, i.e., they did not file their returns "under protest."

[REDACTED]

After the [REDACTED] opinion (on remand) responding to the United States Supreme Court's opinion, the State had the option of "enforcing" the [REDACTED] tax against all concerned or "forgiving" the taxes imposed.

The [REDACTED] General Assembly responded by enacting legislation prohibiting the assessment of the [REDACTED]

[REDACTED]

On [REDACTED]

[REDACTED]

Ultimately (on [REDACTED]

[REDACTED]

[REDACTED]. The [REDACTED] Supreme Court concluded that while it is within the General Assembly's authority to direct refunds to taxpayers who had paid the [REDACTED] Constitution prohibits the General Assembly from levying a tax which discriminates in favor of or against taxpayers in the same classification. [REDACTED]. That is, the General Assembly could not direct the Secretary of the Department of Revenue to make refunds only to those taxpayers who filed their [REDACTED]. " As a result of the [REDACTED], the State Department of Revenue issued refund checks to all taxpayers who filed [REDACTED] for [REDACTED] through [REDACTED]. [REDACTED]

ANALYSIS

The value of the gross estate of a decedent includes "the value at the time of his death of all property." I.R.C. § 2031(a) (emphasis added). Claims of the estate fall into the category of "other property" under Treas. Reg. § 20.2031-9. The operative valuation date is the date of death or alternate valuation date. Estate of Davis v. Commissioner, T.C. Memo. 1993-155.

Pending [REDACTED] tax refund claims have a value that can be determined, and such value is required to be included in the gross estate under I.R.C. §§ 2031(a) and 2033. See, e.g., Bank of California v. Commissioner, 133 F.2d 428, 433 (9th Cir. 1943) (fair market value at date of claimant's death of pending claims for tax refunds can be determined; such value is includible in the value of the gross estate under the predecessor of I.R.C. §§ 2031 and 2033).

Valuation of property to be included in the gross estate is based on facts reasonably known at the date of valuation. Subsequent events are not considered in fixing fair market value, except to the extent such events were reasonably foreseeable at the date of valuation. United States v. Cartwright, 411 U.S. 546, 551 (1973); Estate of Gilford v. Commissioner, 88 T.C. 38, 52 (1987); see also Treas. Reg. § 20.2031-1(b). The amount subsequently paid on the claim and appropriate discounts for costs of litigation or administrative resolution, hazards of litigation, and the time value of any delay in receiving funds are all factors that must be considered in determining the fair market value of the refund claim to be included in a decedent's gross estate. Estate of Davis, T.C. Memo. 1993-155, 65 T.C.M. (CCH) 2365, 63 T.C.M. (RIA) ¶ 93,155; Estate of Barneson, No. 99593 (T.C. Memo. 1945), 4 T.C.M. 427 (CCH). Cf. American National Bank & Trust Co. v. Commissioner, 594 F.2d 1141, 1144-45 (7th Cir. 1979).

Accordingly, it is important to recognize that the [REDACTED] refund claims had some value prior to the legislative and judicial actions giving claimants an absolute right to a refund. However, we are aware of the speculative value of such claims prior to the actions of the General Assembly in [REDACTED] and of the [REDACTED] in [REDACTED]; the small face amount of the majority of the refund claims; and the high volume of similar claims that would require consistent administrative treatment for Federal estate tax purposes. As a matter of administrative convenience, therefore, the National Office (Office of Passthroughs and Special Industries) has agreed that it would be in the best interests of the Internal Revenue Service to apply a "bright line" rule for the inclusion of such refund claims in the gross estates of claimant decedents. Under this "bright line" rule, the value of certain pending refund claims to be included in the gross estates of refund claimants would be valued at zero and the value of other pending refund claims would be valued at the full face amount claimed, as set forth in the table below. Moreover, to the extent that the refunds eventually issued to all refund claimants include interest accrued to the date of the [REDACTED] tax payment, the amount of such interest attributable to the period prior to a claimant's death must be included in the decedent's gross estate. See Estate of Barneson, supra. Interest attributable to the post-death period is not included in the gross estate, id., but is taxable under I.R.C. § 691(a)(1) as income in respect of a decedent.

**Value of Pending [REDACTED] Tax Refund
Claims to Be Included in Gross Estates**

Decedent filed refund claim "under protest"; date of death prior to [REDACTED]	Decedent filed refund claim "under protest"; date of death after [REDACTED]	Decedent did not file refund claim "under protest"; date of death prior to [REDACTED]	Decedent did not file refund claim "under protest"; date of death after [REDACTED]
-0-	Full amount claimed, plus interest accruing to date of death	-0-	Full amount claimed, plus interest accruing to date of death

RELATED ISSUE

A related question is how an estate should handle a refund received after the decedent's date of death. In that case, the representative of the estate should file a Form 1041 reporting the refund in income. If the decedent filed federal income tax returns on which he claimed the amount of the [REDACTED] tax as a deduction, the full amount of the refund (tax and interest) would be included in income. I.R.C. § 61(a) and (a)(4); Treas. Reg. § 1.61-7. If the decedent did not claim the amount of the [REDACTED] tax paid as a deduction, only the amount of the interest on the tax would be included in income. I.R.C. § 111. [If the refund is includible in the gross estate on the Federal estate tax return, the estate is entitled to a deduction on the Form 1041 for the amount of the estate tax attributable to the refund. I.R.C. § 691(c).]

If you have any questions concerning this matter, please contact [REDACTED] on extension [REDACTED].

[REDACTED]
Associate Area Counsel (SBSE)

cc: Estate & Gift Tax Attorney [REDACTED]
Acting Manager, Group [REDACTED]

cc: [REDACTED]
Taxpayer Advocate
[REDACTED], [REDACTED]